IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1111 OF 2006

Mr. Siddhanath B. Shukla ..Petitioner
Vs.
M/s. P.D. Silk Mills and ors. ..Respondents

Mr. P.S. Dani for petitioner.
Mr. Kishore Jain i/by Tushar Goradia & Bhavik P. Manek for respondent no.1.

CORAM: B.H. MARLAPALLE, J.

Date : April 26, 2007.

P.C.:

1. Heard Mr. Dani the learned counsel for the petitioner who was respondent no.2 in Misc. Notice No. 513 of 2000. The said notice was taken out in R.A.E. Suit No. 901/2095 of 1992. The plaintiffs had filed the said suit on the grounds of non-user of the suit premises and arrears of rent on or about 4/11/1992. The suit summons were attempted to be served on the defendant-firm on 26/3/1993, 27/3/1993 and 31/3/1993 at the suit premises. The suit summons were pasted on 27/5/1993. The suit was placed for ex parte hearing and on the basis of the evidence of Mr.Firoze Fakrddin Pathanwala recorded on 5/5/1999, the suit was decreed on 7/6/1999. When the warrant of

possession was sought to be executed on 11/10/1999 the suit premises was found locked and an application to break open the lock of the suit was made on 12/10/1999. The possession of the suit premises was delivered to the plaintiffs through the bailiff of the Small Causes Court on 13/10/1999 and thereafter the defendants took out the Misc. Notice No. 513 of 2000 for setting aside the decree dated 7/6/1999 and for restoration of possession of the suit premises. This notice has been dismissed by the Small Causes Court on 28/3/2001 and the original respondent no.1/defendan no.1 filed Appeal No. 336 of 2001 before the Appellate Bench of the Small Causes Court at Mumbai. The said appeal came to be dismissed by the impugned judgment and order dated 17/1/2006.

2. This petition has been filed by the original respondent no.2 before the Lower Appellate Court on the limited ground i.e. to challenge the order calling upon him to vacate the premises and hand over to the Court Receiver. Mr. Dani the learned counsel for the petitioner made it clear that the petitioner has no challenge to the order of the Lower Appellate

Court making the notice absolute and restoring the suit for hearing in accordance with law and by setting aside ex parte order dated 7/6/1999.

3. Mr. Dani submitted that the landlord was put in possession and he had rightly inducted him and he not being an unauthorised entrant was not required to be evicted during the trial of the suit on remand. He also submitted that this court in Chamber Summons No.1268 of 2004 taken out in Suit No. 2578 of 1995 had post facto sanctioned the occupation and possession of the suit premises in favour of the petitioner.

4. The Lower Appellate Court noted that the suit premises were in fact put in possession of the Court Receiver as per the orders passed by this court and while the premises were in possession of the Court Receiver it was not permissible for the landlord to induct the petitioner in the suit premises. Even in the Chamber Summons which was made absolute by this court by its order dated 25/4/2005, the present petitioner had given an undertaking to abide by the

orders that will be passed in the restoration application filed in the tenancy suit. Mr.Dani then submitted that the petitioner could be continued as a agent of the Court Receiver and during the trial of the suit. It is not necessary to consider this issue when it was noticed that the plaintiff-landlord did not have the authority in law to induct the petitioner in the suit premises. In these obtaining circumstances, the direction in the impugned order calling upon the petitioner to hand over the suit premises to the Court Receiver cannot be termed as perverse or grossly erroneous so as to cause interference in the same under supervisory powers of this court under Article 227 of the Constitution.

5. Hence, the petition is rejected summarily. At this stage Mr. Dani the learned counsel for the petitioner prays for time to hand over the suit premises to the Court Receiver and more so when by way of ad-interim order he was protected. The petitioner is granted two weeks time subject to his filing normal undertaking with the Registry of this Court by 30/4/2007.

(B.H. Marlapalle,J.)